IN THE HIGH COURT OF BOMBAY AT GOA.

FIRST APPEAL NO. 64 OF 1998.

1. State of Goa through
   Deputy Collector (Dev)
   & LAO, Panaji.
2. The Chief Town Planner,
   Town & Country Planning
   Dept., Government of Goa,
   Panaji. ... Appellants.

Versus

1. Bernadette De Sa e Cotta,
   r/o Agasaim.
2. Shri Jose Schubert Cotta,
   r/o Agasaim.
3. Mrs. Macxy S. Cotta,
   r/o Agasaim.
4. Alfredo M. Cotta,
   r/o Campal, Panaji.
5. Mrs. Ingrid Cotta,
   r/o Campal, Panaji.
6. Mr. Shoda T. Cotta,
   r/o Agasaim.
7. Miss Diana S. Cotta,
   r/o Agasaim.
8. Miss Liezel M. Cotta,
   r/o Agasaim.
9. Edgar M. Cotta,
   r/o Agasaim.
10. Edwin E. Cotta,
    r/o Agasaim.
    All the respondents except
    Nos. 2 and 3 are represented
    by their Attorney Mr. Alfredo
    M. Cotta while respondents 2
    and 3 are represented by
    respondent 1. ... Respondents.

Mr. H.R. Bharne, Government Advocate for the Appellants.

Coram : S.A. BOBDE, J.

Date : 23rd July 2004.

ORAL JUDGMENT.

This is a First Appeal by the State questioning the Award of the reference Court by which the reference Court has enhanced the rate of

compensation of the acquired land from Rs. 150/- per square metre to Rs. 173/- per square metre.

2. The acquired land admeasures 2,302 square metres from P.T. Sheet No. 147, Chalta Number 2. The Notification under Section 4 was published on 19th February 1982 specifying the public purpose for parks, recreational and other developments. The Land Acquisition Officer awarded compensation at the rate of Rs. 150/- per square metre. Dissatisfied the respondents sought a reference under Section 18 of the Land Acquisition Act. The reference Court, after recording the evidence and looking into the comparable sale instances produced, enhanced the compensation to Rs. 173/- per square metre. The State has appealed against the Award.

3. The claimants examined four witnesses. Claimant No. 9 as A.W.1, a Valuer as A.W.2, who filed a valuation report, one Carmina Fernandes as A.W.3, who cited a sale instance and Ashok A. Cota as A.W.4, who proved another sale instance.

4. It must be noted at the outset that the reference Court has enhanced the compensation in view of the Award of the reference Court in Land Acquisition Case No. 72 of 1990 in which the reference Court

awarded compensation at the rate of Rs. 230/- per square metre for land situated admittedly about 100 metres away from the land in question. Having perused the evidence and the Award of the reference Court, I am not inclined to revise the said rate in any way. The land in question is located about 300 square metres from the Miramar Circle and is about 0.60 metres below the road. It is obviously in a locality where there is habitation. The nearest house is about 100 metres away and the seashore is about 150 metres away, a setting normally considered very desirable for the purpose of habitation. A school, college, etc., are within a radius of 1 kilometre. A.W.2 has deposed that a motorable road reaches right up to the suit plot and, except 100 metres, the major part of it is asphalted.

5. R.W.1 has accepted the fact that the suit plot touches the Mandovi River but has stated that a part of it is below the road.

6. These factors have all been adverted to by the reference Court.

7. Eventually, at stated above, the reference Court has referred to the Award Exhibit A.W.1/G and has considered the compensation payable for the acquired land with reference to the land covered by the Award.

Rightly, the reference Court has noticed that the Award A.W.1/G was in respect of a property for which plans for development were already approved and the final NOC has already been obtained from the Panjim Municipal Council. The Court next noticed that the acquired land is not developed.

8. The reference Court has come to a categorical conclusion that the acquired land is suitable for construction purpose eventhough basically it is a paddy field. The Court has noticed that over the years wind has carried sand into the field and that sand has filled up the acquired land. In fact, the appellants failed to cross-examine A.Ws. 1 and 2 by suggesting to them that the land was not suitable for construction purpose. Mr. Bharne, the learned Government Advocate, however, submitted that the reference Court has not granted a due reduction having regard to the fact that the land is 0.60 metres below the road level and has also referred to the respondents own admission that it would require about Rs. 22/- to fill up the land so as to bring it to the road level. It is having regard to this factor that the Court has directed a reduction of 25%, which is clearly more than the reduction of about 10% (Rs. 22/-) claimed by the respondents. I, therefore, find that there is no appreciable error of fact or law in the reference Court having reduced the rate from Rs. 230/-

to Rs. 173/- by deducting 1/4th of the amount.

9. In these circumstances, there is no merit in the Appeal, which is, hereby, dismissed.

(S.A. BOBDE)
JUDGE.

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